Section 1150 of the Civil Procedure Code is as follows:—

(1) In any cause or matter pending before the Court of Appeal any direction incidental thereto, not involving the decision of the Appeal, and any interim order to prevent prejudice to the claims of the parties pending the appeal may, if the Court of Appeal is not sitting, be made by a single Judge.

(2) Every application under this section shall be made by motion, and shall be entitled "In the Court of Appeal."

(3) Every order so made may be discharged or varied by the Court of Appeal.

In my opinion Deane, J. had no jurisdiction to make an order extending the time within which to give notice of appeal.

The giving of such a notice is the inaugural step to Appeal and in order to complete the commencement of an Appeal notice must be given in strict compliance with the provisions of section 1127 of the Civil Procedure Code.

The very reason for the Defendants' motion was that they had not given the notice and the effect of the order extending time was to bring into existence an Appeal, to create that which but for the order did not exist.

The powers of a single judge are strictly limited to dealing with incidental matters which arise in a cause or matter pending before the Court of Appeal and here in my opinion nothing was so pending.

Equally as the making of the order brought the Appeal into existence so the refusal of an order would put an end to the Defendants preferring an Appeal and so cannot well be said to be an order which was incidental and did not involve the decision of the Appeal.

Both the orders of Deane, J. were wrong and must be set aside.

Secondly, as to the Plaintiff's Appeal.

This was clearly misconceived; the proper procedure for bringing in question an order made by a single Judge under the powers conferred by section 1150 of the Civil Procedure Code is to apply to the Court of Appeal under the provisions of sub-section 3 of that section. The Appeal must therefore stand dismissed.

As to the costs.

The Plaintiff's Appeal has failed and his motion succeeded and the proper order is, I think to make no order as to the costs of either.

The costs of the Defendants' motion before Deane, J. have been taxed and paid by the Defendants to the Plaintiff. We granted the Defendants an indulgence by extending his time for appealing, and he should pay the costs of obtaining that indulgence.

In order to avoid the trouble and expense of taxation we saw Counsel for both parties in Chambers, after the hearing of the Appeal, and they then agreed that instead of a refund being made and a fresh taxation being had the amount already paid by the Defendants to the Plaintiff (*i.e.*, the total of the costs taxed under the Order of Deane, J.) should be retained by the Plaintiff in satisfaction of his costs of the indulgence granted by this Court to the Defendants. In the result then the only order as to costs will be such as is necessary to record approval of this eminently sensible plan.

STEVENS, J.—This motion and appeal involved the question whether a single Judge sitting as a Court of Appeal and acting under the powers conferred on him by section 1150 (1) of the Civil Procedure Code has power to enlarge the time appointed by the Code for bringing an appeal from the Supreme Court in the exercise of its original jurisdiction. The power of the Court of Appeal to do so is expressly provided for by Section 1146 of the Code.

Now the powers of a single Judge under Section 1150 are confined to matters arising in a matter *pending* before the Court of Appeal, and not involving the decision of the appeal. In my opinion, (and I have on several occasions acted on it previously) an appeal which has not been brought is not a pending cause or matter, when an application for leave to bring an appeal cannot be an application for directions in a cause or matter pending before the Court of Appeal. For this reason I am of opinion that a single Judge has no jurisdiction to enlarge the time for the bringing of an appeal. I agree with the judgments of the other members of the Court.

Solicitors for the Plaintiff—*Braddell Brothers.*

Solicitors for the Defendants—*Allen & Gledhill.*

(*Editorial Note.*—During the hearing of the appeal the Court expressed the view that in such cases the motion for extension of time should be served as early as possible in order to shew the Court how much out of time the motion actually is and to notify the other side.)

[APPELLATE CIVIL JURISDICTION]

S. S. SUBRAMANIAN CHETTIAR

vs.

K. R. P. R. A. L. RENGANATHAN CHETTIAR.

[SINGAPORE CIVIL APPEAL No. 21 of 1932]

Practice—withdrawal of appeal—notice of Registrar—Civil Procedure Code, S. 1131 (1).

A withdrawal of a pending appeal may be effected by giving to the Registrar notice of such withdrawal duly consented to by the respondent or his Solicitors.

A Notice of Appeal was lodged by the Defendant against a Judgment of the Supreme Court in its original civil jurisdiction. The Defendant decided not to proceed with the Appeal and by consent of the Plaintiff lodged a notice of withdrawal of the appeal. The Registrar kept

the appeal in the list of Appeals and accordingly the matter was mentioned to the Court of Appeal (Murison, C.J., Burton, J., and Whitley, J.)

Spenser-Wilkinson for Appellant.

This appeal should not have appeared in the list. A proper notice of withdrawal duly consented to by the solicitors for the Respondent had been lodged with the Registrar. *Watson* v. *Cave*, (No. 2) (1881) 17 C.D. 23 is an authority for the submission that an appeal is at an end as soon as the appellant has given notice of withdrawal and the other parties to the appeal have consented to such withdrawal. He referred also to Section 1131(1) of the Civil Procedure Code and Van Someren's notes thereto.

Koek for the Respondent.

While not opposing the appellant's contention suggested that the Court might wish to retain some control over the withdrawal of appeals once they had been instituted and pointed out that an ordinary suit could not be discontinued without leave of the Court, after a certain stage had been reached.

Murison, C. J. delivered the Judgment of the Court.

MURISON, C.J.—In this case the Appellant entered an appeal and afterwards notified the Respondent that he wished to withdraw the appeal. The Respondent agreed to the withdrawal and signed a consent paper to that effect. This withdrawal was notified to the proper officer of the Court namely the Registrar. The matter should have ended there but the Registrar doubted whether this procedure was correct or whether the appeal could be withdrawn in this way and he put the case in the list for the Court of Appeal.

In our opinion the procedure adopted by the Registrar was not correct.

Once the proper officer had been notified that the appeal was withdrawn by consent of the parties and the consent paper filed the appeal was at an end. It is not now properly before us and therefore we cannot deal with it at all.

We understand that the parties have agreed between themselves on the question of costs and therefore no question arises on this subject.

Solicitors for Appellant (Defendant)—
Donaldson & Burkinshaw.

Solicitors for Respondent (Plaintiff)—
Chan & Eber.

[ORIGINAL CIVIL JURISDICTION.]

THE NESTLE & ANGLO-SWISS CONDENSED MILK CO. .. .. .. Plaintiffs

Versus

THE EAST ASIATIC CO., LTD. .. Defendants

[SINGAPORE SUIT No. 8 OF 1932]

Trade Mark—Passing off—name acquired in market—similarity of get-up—actual confusion.

No trader can adopt a trade-mark so resembling that of a rival as that ordinary purchasers, purchasing with ordinary care, are likely to be misled.

If the goods of a manufacturer have, from the mark or device he has used, become known in that market by a particular name, the adoption by rival trader of any mark which will cause his goods to bear the same name in the market, is as much a violation of the rights of that rival as the actual copy of the device.

The plaintiff Company, manufacturers and sellers of sweetened condensed milk, in 1925 introduced into the Singapore market a brand called the "ROSE BRAND" which was specially designed for the coffeeshop trade. Upon each tin was a label bearing the design of a red rose with a red bud on each side of it, the words "Rose brand" appearing in blue under the rose. This brand which acquired great popularity had come to be generally known in the market by the name of Flower brand or its equivalents in the Malay and Chinese languages. In 1931 the defendants advertised a new brand called "Lotus Brand." To each tin of this milk as first imported into the Colony was affixed a label on which appeared the design of a single large red or pink flower—a lotus—with a bud of similar colour on each side of the flower. The size and relative positions of these buds were similar to those of the buds on the Rose Brand tins and there was a blue band round the top and bottom of both labels and the wordings were printed in blue. Conscious of the danger of confusion, the plaintiffs made repeated protests, after which the defendants modified the design of their mark and produced a new label, the differences between this and the previous one being that a yellow band was substituted for the blue band around the top and bottom and the buds on each side of the main flower were deleted. In an action brought by the plaintiffs against the defendants for an injunction to restrain the use of the defendants' trade mark.

Held, (on the evidence) that the plaintiff's milk had become widely known in the market by the name "Chop Bunga"; that the get-up of the two brands of milk was similar; and that they had been definite instances of actual confusion. The plaintiffs, under the circumstances, were entitled to an injunction.

Reddaway v. *Banham*, (1896) A.C. 199; *Orr Ewing & Co.* v. *Johnston & Co.* (1880) L.R. 7 A.C. 219 and *Seixo* v. *Provizende*, L.R. 1 Ch. App. 192, applied.

ACTION tried before Whitley, J. on the 24th, 25th, 29th, 30th and 31st August, 1932.

The material facts and arguments are set out in the Judgment below.

Spenser-Wilkinson, for the plaintiffs.

Page, (*Walters* with him) for the defendants.

Cur. Ad. Vult.